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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff, Counter-defendant,
 v.
 APPLE INC.,
Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF ETHAN DETTMER IN
 SUPPORT OF APPLE INC.'S
 ADMINISTRATIVE MOTION TO SEAL
 DEPOSITION TESTIMONY IN SUPPORT
 OF APPLE INC.'S POSITION IN JOINT
 LETTER BRIEF REGARDING THE
 CLAWBACK OF DOCUMENTS**

Hon. Thomas S. Hixson

Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential information, based on my personal experience representing Apple.¹ I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify competently thereto. I submit this declaration in support of Apple’s Administrative Motion to Seal Deposition Testimony in Support of Apple Inc.’s Position in the Joint Letter Brief Regarding the Clawback of Documents, Dkt. 493.

2. The request for relief is narrowly tailored and necessary to the confidentiality of information described below.

3. In determining whether to permit documents to be filed under seal, courts in the Ninth Circuit apply two separate standards: (1) the “compelling reason” test for sealing information in connection with motions for a determination on the merits of a claim or defense; and (2) the less-restrictive “good cause” test for sealing information in connection with non-dispositive filings. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016). Here, the less-restrictive good cause test applies, because the underlying dispute is non-dispositive.

4. Apple operates in an intensely competitive marketplace. It occupies a unique position as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive, proprietary information in order to gain competitive advantage. As such, Apple takes extensive measures to protect the confidentiality of its proprietary information.

¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel submitted pursuant to Local Rule 79-5. *See, e.g., In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration supporting filing under seal.

